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Before the
Federal Communications Commission
Washington, DC 20554DISPATCHED BY
In the Matter of)Request for Review of the)
Decision of the)
Universal Service Administrator by)New Kensington-Arnold School District)
New Kensington, Pennsylvania)

File No. SLD-28754

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

CC Docket No. 97-21 ✓

ORDER**Adopted: December 20, 1999****Released: December 21, 1999**

By the Common Carrier Bureau:

1. The Bureau has under consideration a Letter of Appeal filed by the New Kensington-Arnold School District of New Kensington, Pennsylvania (New Kensington) on May 24, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). New Kensington seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.¹ In this Order, we deny the Letter of Appeal.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.²

3. By letter dated February 24, 1999, the SLD denied New Kensington's application for discounted services, on the grounds that a significant portion of New Kensington's funding request included products and services ineligible for discounts.³ In a letter filed with SLD on

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.502, 54.503.

³ See Letter of the Schools and Libraries Division of the Universal Service Administrative Company to Ron Aikins and Jim Jones, New Kensington-Arnold District, dated February 24, 1999 (*Funding Commitment Letter*).

March 12, 1999. New Kensington appealed SLD's denial of its funding request.⁴ In its appeal, New Kensington asserted that SLD's denial was based on "very broad proposal statements" New Kensington made in the FCC Form 471 it filed with SLD.⁵ New Kensington further stated that SLD's denial was based on a general list of services provided by its service provider, instead of a table of cost details New Kensington provided to SLD on February 17, 1999. By letter dated May 4, 1999, SLD denied New Kensington's appeal, on the grounds that more than 50 percent of New Kensington's funding request included ineligible services.⁶ The Decision on Appeal further stated that the supporting information submitted by New Kensington showed that New Kensington's request included a large proportion of ineligible products and services.⁷ In a letter filed with the Commission on May 24, 1999, New Kensington appeals SLD's denial of its request for discounts.⁸ In its Letter of Appeal to the Commission, New Kensington states that SLD's denial of funding was erroneously based on a list of services provided and a support agreement contract, instead of the cost data New Kensington later submitted to SLD. On appeal, New Kensington asks that it receive discount funding based on this later submitted information. For the reasons set forth below, we deny New Kensington's appeal.

4. Under section 54.504 of the Commission's rules, eligible schools, libraries and consortia must file FCC Forms 470 ("Description of Services Requested and Certification") and 471 ("Services Ordered and Certification Form") with the Administrator in order to receive discount funding under the schools and libraries support mechanism.⁹ The Commission's rules thus clearly contemplate that these forms constitute the means by which eligible schools, libraries, and consortia are to apply for discount funding. Although, in certain circumstances, it may be appropriate for applicants to supplement the information contained in their application forms in order to clarify that information, in its Letter of Appeal to the Commission New Kensington asks that it be permitted to do much more than clarify the information contained in its original FCC Form 471. Rather, New Kensington asks that it be permitted to replace that information with entirely new information submitted for the first time to the Commission as part of New Kensington's Letter of Appeal. In both the information submitted to SLD with New Kensington's FCC Form 471 and subsequently submitted to SLD in an attempt to clarify its funding request, New Kensington submitted information revealing the fact that more than 50 percent of its funding request was for ineligible services, including technical support for ineligible services, consulting services, and teacher training, among others. In its appeal to the Commission, New Kensington submits entirely new cost data, facially similar to the detailed cost data it submitted to SLD, but containing substantially different information. Omitted from the

⁴ See Letter of James Jones, New Kensington-Arnold School District, to Schools and Libraries Division of the Universal Service Administrative Company, dated March 9, 1999.

⁵ *Id.*

⁶ See Letter of Schools and Libraries Division of the Universal Service Administrative Company to James Jones, New Kensington-Arnold School District, dated May 4, 1999 (*Administrator's Decision on Appeal*).

⁷ *See id.*

⁸ See Letter of James Jones, New Kensington-Arnold School District, to the Office of the Secretary, FCC, dated May 18, 1999 (*Letter of Appeal*).

⁹ 47 C.F.R. § 54.504.

current cost data are several ineligible services that formerly appeared on the table submitted to SLD, including, for example, technical support services for ineligible products and services. New Kensington's revised submission also includes certain services and products not previously listed on the table submitted to SLD with respect to which New Kensington now requests a greater amount of support. If the Bureau were to grant New Kensington's Letter of Appeal, New Kensington effectively would be permitted to submit a second application for discounted services through the Commission's appeals process. This action would clearly undermine section 54.504 of the Commission's rules by permitting applicants to circumvent the application mechanism for discount funding that is contained in that section.

5. In support of its Letter of Appeal, New Kensington explains that, midway into the application process, the employee responsible for submitting New Kensington's application found the "job overwhelming and confusing," due to his "late insertion into the program after the original administrator left . . . for employment elsewhere."¹⁰ New Kensington explains that its new employee's intent was "to include all possible services and equipment in a very broad manner and hope it was correct."¹¹ This explanation does not obviate the applicability of the Commission's rules governing the schools and libraries support mechanism, including its rules governing the application process, to New Kensington's request for schools and libraries discount funding. Consequently, the Bureau cannot consider New Kensington's newly submitted cost data. Rather, the Bureau can only consider the information that was before SLD prior to New Kensington's appeal to the Commission. Although there is substantial variation among New Kensington's submissions, each of which was filed at different stages of the application process, in each submission it is apparent that ineligible products and services accounted for more than 50 percent of New Kensington's request. New Kensington had opportunities to clarify that information, both throughout the application process and in its Letter of Appeal to the Commission, to demonstrate that more than 50 percent of its request was not comprised of ineligible products and services. At each stage in the process, however, New Kensington has failed to provide such clarifying information. Instead, New Kensington has submitted entirely new information to the Commission, omitting mention of ineligible services previously requested, and requesting for the first time funding for certain additional services. Under these circumstances, we must affirm SLD's denial of New Kensington's application for discounted services.

¹⁰ *Letter of Appeal* at 1.

¹¹ *Id.*

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by New Kensington-Arnold School District on May 24, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Yog R. Varma", with a long horizontal flourish extending to the right.

Yog R. Varma
Deputy Chief, Common Carrier Bureau